
UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

DARRELL L. DEEM, et. al.,

Plaintiffs,

v.

TRACEY BARON, et. al.,

Defendants.

MEMORANDUM DECISION

AND ORDER

2:15-CV-00755-DS

District Judge David Sam

Plaintiffs have moved for Summary Judgment based on the grounds that no triable issue of fact remains for trial. ECF No. 186. Plaintiffs seek summary judgment on all causes of action alleged in Plaintiffs' Third Amended Complaint and on all causes of action alleged in Defendants' Counterclaim.

Rule 56(a) states: “The court shall grant summary judgment if the movant shows that there is *no genuine dispute as to any material fact* and the movant is entitled to judgment as a matter of law” (emphasis added). In this case, the record is full of fact disputes on every major point. Defendants denied the overwhelming majority of plaintiffs’ requests for admissions, which focused on the elements necessary to prove each claim. Plaintiffs themselves acknowledge in their motion that the central issues in this case—the amounts the defendants paid and the amounts plaintiffs claim to be owed—are disputed. As defendants point out, “[t]his is not the kind of clean record that presents itself as ripe for a summary judgment determination.” ECF No. 215 at 2.

Plaintiffs' motion also fails to meet the requirements for the statement of undisputed material facts. The Local rules provide the following:

A motion for summary judgment must include the following sections and be supported by an Appendix of Evidence as follows:

...

(3) Statement of Undisputed Material Facts: A concise statement of the undisputed material facts that entitle the moving party to judgment as a matter of law. Only those facts necessary to decide the motion should be included in this section. The moving party must cite with particularity the evidence in the appendix of Evidence that supports each factual assertion.

DUCivR 56-1(b)(3).

Plaintiffs' statement of undisputed material facts consists of only seven facts. Five of them are unsupported by any evidentiary citation. ECF No. 186 at 11-12, #3, 4, 5, 6, and 7. The other two facts, #1 and 2, refer generally to what plaintiffs say are 56 documents attached as one exhibit, with no "particularity" in citation as required by the rule. The remainder of Plaintiffs' motion shows that these seven facts are not the "facts necessary to decide the motion." The body of the motion discusses at great length numerous other exhibits and items of evidence never mentioned in the required statement of material facts. Defendants are unable to determine what set of claimed undisputed material facts to which they are supposed to respond.

For these reasons and a number of other reasons described in Defendants' opposition to Plaintiffs' motion, the court hereby DENIES Plaintiffs' Second Motion for Summary Judgment (ECF No. 186). SO ORDERED.

DATED this 26th day of July, 2018.

BY THE COURT:



DAVID SAM
United States District Judge